

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Test of Experimental Product –
USPS Connect Local Mail

Docket No. MT2022-1

PUBLIC REPRESENTATIVE COMMENTS ON
USPS CONNECT LOCAL MAIL MARKET TEST

(Issued December 13, 2021)

I. INTRODUCTION

On November 10, 2021, the Postal Service filed a notice, pursuant to 39 U.S.C. § 3641 and 39 C.F.R. part 3045, announcing its intent to conduct a market test of an experimental product called USPS Connect Local Mail.¹ USPS Connect Local Mail is a local, same-day or next-day arrival delivery service “designed to address the needs of businesses that send important documents locally with regular frequency.” *Id.* at 1. For the reasons discussed below, the Public Representative generally supports the Postal Service’s proposed market test; however, she notes several concerns.

II. POSTAL SERVICE MARKET TEST NOTICE

The Postal Service proposes to launch a market test that delivers documents between local businesses with same-day or next-day arrival. *Id.* It states that USPS Connect Local Mail is “designed to address the needs of business that send important documents locally” and “with regular frequency.” *Id.* The Postal Service further states that the product is intended to target customers like law firms, medical offices, and real

¹ United States Postal Service Notice of Market Test of Experimental Product – USPS Connect Local Mail, November 10, 2021 (Notice).

estate firms that mail multiple documents a week. *Id.* at 3. It maintains that USPS Connect Local Mail “will be an attractive option for local mailers because it is significantly different from other products currently offered by the Postal Service, and it is priced more economically than the current expedited products.” *Id.* at 4.

The Postal Service maintains that “economical local delivery” is a market that is “underserved” by the Postal Service. *Id.* at 1. Although, the Postal Service acknowledges that options for same- or next-day delivery exist for customers mailing locally, it indicates that those services are “designed for end-to-end mailing over longer distances ... and are priced accordingly.” *Id.* Because USPS Connect Local Mail will bypass end-to-transportation costs, the Postal Service plans to offer USPS Connect Local Mail for \$2.95 for a Letter or Flat size mailpiece weighing up to 13 ounces which will cover the estimated attributable cost per piece of \$2.03.² The Postal Service indicates that documents mailed must be paper-based and may contain personal information. *Id.* at 3. Additionally, it indicates that customers will receive free packaging and tracking with the product. *Id.* at 4.

The Postal Service explains that “USPS Connect Local Mail will be the first First-Class Mail product accepted at Destination Delivery Units (DDUs) or by carrier pick-up in line-of-travel (LOT).”³ The described local induction will allow the Postal Service to offer same-day or next-day delivery to each address served by the delivery unit of a local Post Office.⁴

² *Id.* at 2. The Postal Service’s attributable cost estimate is based on the volume-variable cost for Priority Mail Flats with modifications related to differences in mail processing, transportation and packaging costs. *Id.* at 2-3.

³ *Id.* at 2. LOT means the USPS Connect Local Mail piece can be handed to the postal carrier at the time the carrier is delivery mail to the address. See Response of the United States Postal Service to Commission Information Request No. 1, November 30, 2021 (Responses to CIR No. 1), at question 1.a. The Postal Service describes in detail the process each customer may use in order to send a USPS Connect Mail piece. See *id.*, question 1.d.

⁴ *Id.* Same- or next-day delivery will be based on whether the mailpiece enters the mailstream within the Critical-Entry Time frame which is between 5:00 a.m. and 7:00 a.m. for same-day delivery. *Id.* at 2.

In compliance with 39 U.S.C. § 3641(d)(1), the Postal Service indicates that the USPS Connect Local Mail market test will begin on January 9, 2022 and run for two years. *Id.* at 3. The Postal Service notes that it may decide to seek permanent product status prior to the market test's completion or it may request an additional year of market testing if more time is needed to determine the product's feasibility or desirability. *Id.*

In addition, the Postal Service states that its market test satisfies each of the conditions of 39 U.S.C. § 3641. *Id.*

As required by 39 U.S.C. § 3641(b)(1), the Postal Service states that USPS Connect Local Mail is "significantly different from all products offered by the Postal Service within the last two years."⁵ The Postal Service indicates that it does not currently offer an expedited First-Class Mail product intended as a quick, cost effective option for local mailers, nor does it offer free packaging and tracking in connection with First-Class Mail products. Notice at 3-4. It notes that, currently, mailers must use Priority Mail Express or Priority Mail to delivery local mail, which are higher cost and higher priced products that are delivered nationwide. *Id.* at 4.

As required by 39 U.S.C. § 3641(b)(2), the Postal Service states that USPS Connect Local Mail "will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer."⁶ It maintains that the USPS Connect Local Mail product "is designed to increase small business access." Notice at 4.

⁵ *Id.* Pursuant to 39 U.S.C. § 3641(b), "[a] product may not be tested under this section unless ... [t]he product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test. See 39 U.S.C. § 3641(b), (b)(1).

⁶ *Id.* Pursuant to 39 U.S.C. § 3641(b), "[a] product may not be tested under this section unless ... The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns." See 39 U.S.C. § 3641(b), (b)(2).

In an attempt to comply with 39 U.S.C. § 3641(b)(3), the Postal Service states that USPS Connect Local Mail should be categorized as a market-dominant product “given the Postal Service’s monopoly over letter delivery.”⁷

Pursuant to 39 U.S.C. § 3641(e), the Postal Service states that should revenues for the USPS Connect Local Mail product approach the annual statutory limitation, it will submit an exemption from the limitation in a timely manner. Notice at 5; 39 U.S.C. § 3641(e).

In compliance with 39 C.F.R. § 3045.3(2)(vi), the Postal Service describes its planned data collection plan for the market test, including volume, revenue, attributable cost, and customer data. Notice at 5; 39 C.F.R. § 3045.3(2)(vi).

III. PUBLIC REPRESENTATIVE ANALYSIS

A. 39 U.S.C. § 3641(b) Requirements

The Postal Service may not test an experimental product under 39 U.S.C. § 3641 unless the experimental product satisfies three requirements in 39 U.S.C. § 3641(b).

1. Significantly Different Product

An experimental product may not be tested under 39 U.S.C. § 3641 unless “[the experimental] product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the [market] test.” 39 U.S.C. § 3641(b)(1).

The Postal Service compares USPS Connect Local Mail to several other Postal Service products. As it relates to Postal Service alternatives within the market-dominant

⁷ *Id.* Pursuant to 39 U.S.C. § 3641(b), “[a] product may not be tested under this section unless ... [t]he Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1).” See 39 U.S.C. § 3641(b), (b)(3).

category of products, the Postal Service indicates there are none.⁸ It specifically states that there is “[n]o other expedited First-Class Mail product for local mailers,” nor one that “offers free packaging or tracking.” See *id.* As it relates to market-dominant products more broadly, the Postal Service further states that “[n]o other market-dominant product is required to be deposited at the site that also serves as the delivery unit.” Responses to CHIR No. 1, question 1.a.

As it relates to Postal Service alternatives within the competitive category of products, the Postal Service indicates that USPS Connect Local Mail is most like Priority Mail and Priority Mail Express. Notice at 4; Responses to CHIR No. 1, question 1.a. The Postal Service notes that these products could be considered similar alternatives because they offer relatively quick delivery when mailed locally with tracking included. Responses to CHIR No. 1, question 1.a. However, the Postal Service points out several differences between USPS Connect Local Mail and these alternative competitive products. First, it indicates that USPS Connect Local Mail will be “handled entirely at the delivery facility using manual processing,” whereas the alternative competitive products travel between Postal Service facilities, can require air transportation, and can receive automated processing. *Id.*, question 1.b.

⁸ Notice at 3-4; see also Chairman’s Information Request No. 1, November 29, 2021 (CHIR No. 1); Responses of the United States Postal Service to CHIR No. 1 (Responses to CHIR No. 1), December 8, 2021, at question 1.a.

Second, the Postal Service explains that USPS Connect Local Mail customers must use Click-N-Ship⁹ or an Application Program Interface (API),¹⁰ which has service terms and conditions, and then will either give the mailpiece directly to the carrier or bring the mailpiece to the Post Office. *Id.*, question 1.c. However, for Priority Mail and Priority Mail Express, the Postal Service notes that no service terms and conditions apply, and that these mailpieces can be sent without Click-N-Ship or API. *Id.* The Postal Service further notes that customers can bring documents or other mailable matter to the Post Office and have them sent anywhere without restrictions. *Id.*; see *also id.*, question 1.d.

Finally, the Postal Service indicates that, unlike Priority Mail and Priority Mail Express, USPS Connect Local Mail is not guaranteed to be delivered on the same day it is dropped off, there is no insurance or other special services options associated with the product and the product cannot be held for pick-up.¹¹

Based on the differences described above, the Public Representative concurs with the Postal Service and finds that, among both its market-dominant and competitive product offerings, USPS Connect Local Mail is significantly different from all other products offered by the Postal Service within the past 2 fiscal years and therefore satisfies 39 U.S.C. § 3641(b)(1).

⁹ Click-N-Ship is an online USPS shipping application *through* the Postal Service's website that enables customers to print shipping labels with postage from their own computers. Additional functionalities include an address book, shipping history, batch label capability, integration with the Shipment Confirmation Acceptance Notification (SCAN) form, multiple payment options, and linking to scheduling a pickup. Available at: https://about.usps.com/publications/pub32/pub32_terms.htm.

¹⁰ API's are applications that allow communication between Point-of-Service (POS) ONE applications and Postal Service information systems as well as with specific service providers such as the bank card processor. POS ONE is the primary hardware and software system used to conduct retail sales transactions in Post Offices. POS ONE automates and simplifies retail transactions and captures transactional data related to products or services sold. Available at: https://about.usps.com/publications/pub32/pub32_terms.htm.

¹¹ See Responses to CIR No. 1, question 5; Responses to CHIR No. 1, question 1.d.

2. Market Disruption

Pursuant to 39 U.S.C. § 3641(b)(2), the USPS Connect Local Mail market test may not proceed unless the “introduction or continued offering” of USPS Connect Local Mail will not create market disruption, which is defined as “an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns”¹² Potential market disruption of the market test must be evaluated both at the beginning of the market test and throughout the duration of the market test to ensure continued compliance with 39 U.S.C. § 3641(b)(2).¹³

The Commission uses a four-step framework to analyze market disruption.¹⁴ The first step of the market disruption analysis is to identify the relevant market for the USPS Connect Local Mail market test. Order No. 2224 at 9-10; Order No. 5239 at 7. The relevant market is identified by examining the description of the experimental product and the geographic area(s) where the Postal Service intends to offer the experimental product during the market test’s duration. Order No. 2224 at 9; Order No. 5239 at 7. The Postal Service confirms that the relevant market, in this instance, is the market for expedited letter mail service with local induction into the mailstream and local delivery.¹⁵ Responses to CHIR No. 1, question 2.a. However, the Postal Service does note that, during the market test, this product is one that will be phased in across the United

¹² 39 U.S.C. § 3641(b)(2). “Small business concern” is defined in 39 C.F.R. § 3001.5(v).

¹³ See e.g., Docket No. MT2019-1, Order Authorizing Plus One Market Test, September 20, 2019 (Order No. 5239).

¹⁴ Docket No. MT2014-1, Order Authorizing Customized Delivery Market Test, October 23, 2014, at 9-12 (Order No. 2224); see also Order No. 5239.

¹⁵ The Public Representative declines to define the relevant market to include products or services that must be offered nationwide. This because local couriers offer expedited local delivery within their geographic area, but those products or services cannot not be said to be offered nationwide. The Commission has previously cautioned against overly limiting the relevant market. See Order No. 4009 at 12 (“the market segment must not be defined so narrowly as to exclude all logical participants, nor so broadly as to include every conceivable participant. This balancing must be done to give meaning to the market power analysis”). In this instance, the Public Representative considers local couriers as logical participants in the relevant market in terms of a market power analysis.

States and will ultimately not be offered by every Post Office.¹⁶ The Public Representative finds the Postal Service's description of the relevant market is reasonable.

The second step of the market disruption analysis is to identify businesses that offer similar products or services in the relevant market. Order No. 2224 at 10; Order No. 5239 at 7. The Postal Service claims that, within the relevant market, the businesses that offer similar services are local courier services that offer same-day delivery, and the United Parcel Service, Inc. (UPS) and Federal Express Corporation (FedEx), which both offer same-day, next-day or 2-day delivery. Responses to CIR No. 1, question 4; Responses to CHIR No. 1, question 2.c.

The third step of the market disruption analysis is to evaluate whether the introduction or continued offering of the experimental product will create "an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer" with regard to the businesses identified in step two. See 39 U.S.C. § 3641(b)(2); Order No. 2224 at 10; Order No. 5239 at 8.

Generally, the Postal Service asserts that USPS Connect Local Mail "will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer" as required by 39 U.S.C. § 3641(b)(2). Notice at 4. As it relates to local courier services, the Postal Service contends that the services offered by these businesses can be differentiated from USPS Connect Local Mail because local couriers "typically build in pick-up on demand services" that justifies the higher prices offered. Responses to CHIR No. 1, question 2.e. As it relates to businesses such as UPS and FedEx, the Postal Service argues that these businesses have "similar enough ground transportation facilities and locations so that there is no reason USPS Connect Local Connect Mail would have an unfair advantage." *Id.* The Postal Service also appears to imply that an apples to apples comparison is "not straightforward" because these other

¹⁶ *Id.* The Postal Service notes that some Post Offices lack the capability to accept and delivery the product due to its unique entry requirements. *Id.*

businesses can and do offer additional options and services for their products, whereas USPS Connect Local Mail offers “limited scanning options ([i.e.], acceptance and delivery scans)” and is not eligible for additional services. *Id.*

The Public Representative finds these assertions reasonable. Although other businesses offer similar products or services in the relevant market, these other products or services have noticeable differences, whether it is more convenient options for pick-up, ability to rely on guaranteed delivery times frames, or available options for add-on services like insurance. The Public Representative also notes that it is likely these other businesses offer products that are not limited to paper documents only or have identical weight limitations.

The Public Representative notes that, as it relates to local couriers, it is difficult to assess with any certainty whether a Postal Service unfair or inappropriate competitive advantage exists. It is highly likely that for each local courier, the products or services offered and their associated limitations, guarantees, add-on options and pricing are specially tailored to the locality they operate in.¹⁷ Despite differences in local courier products or services and USPS Connect Local Mail, the existence of any Postal Service unfair competitive advantage could vary depending on the geographic area and the prices charged by local couriers. Without such detailed information, it is difficult to determine whether the Postal Service has an unfair competitive advantage.

Considering local couriers in general, the Public Representative believes any chance of an unfair or inappropriate competitive advantage is mitigated by the differences in products or services offered by local couriers and the limitations of USPS Connect Local Mail.

Finally, the Public Representative notes that the Commission may also consider whether any of these “competing” businesses file comments in this matter that assert

¹⁷ For example, the Public Representative assumes that products or services offered by local couriers in rural areas can differ greatly from the products or services offered by local couriers in urban areas.

that the market testing of USPS Connect Local Mail creates an unfair or inappropriate competitive advantage.

The fourth step of the market disruption analysis involves examining the impact of the market test on “small business concerns,” as defined in 39 C.F.R. § 3001.5(v), in the relevant market. Order No. 2224 at 11; Order No. 5239 at 9. In this case, “small business concerns” mean Courier and Express Delivery Services companies with 1,500 or fewer employees and Local Messengers and Local Delivery companies with annual receipts of \$30 million or less that meet certain criteria.¹⁸ The Postal Service contends that, based on the differences referenced above, USPS Connect Local Mail will not “directly compete” with small businesses offering similar products.¹⁹ Responses to CHIR No. 1, question 2.f. The Postal Service notes that these small businesses “tend to be much more specialized and offer conveniences” that USPS Connect Local Mail will not offer. *Id.* The Public Representative finds the Postal Service’s assertions reasonable. Additionally, the Public Representative reiterates that, in analyzing the proposed market test, the Commission may consider whether any small businesses file comments in this matter that assert that the market testing of USPS Connect Local Mail will impact small business concerns.

In their totality, the Public Representative considers the Postal Service’s assertions about potential market disruption reasonable. Furthermore, 39 U.S.C. § 3641 and 39 C.F.R. part 3045 contain additional safeguards to ensure that market disruption will not occur. See *generally* 39 U.S.C. § 3641 and 39 C.F.R. part 3045. Market tests are limited in duration, and the Commission is authorized to limit the amount of revenues the Postal Service may obtain from any particular geographic

¹⁸ 39 C.F.R. § 3001.5(v); 13 C.F.R. § 121.201, Sectors 48-49, Subsector 492 (applicable Small Business Administration size standards).

¹⁹ This is somewhat contradictory to the Postal Service’s belief that the local document delivery market “could benefit from increased competition,” which implies the Postal Service does intend to directly compete with other businesses active in the local delivery market leading to some small business impacts, though not necessarily adverse impacts. See Notice at 1.

market as necessary to prevent market disruption. 39 U.S.C. §§ 3641(d), (e)(1); 39 C.F.R. §§ 3045.10, 3045.15 through 3045.17. If necessary, the Commission may also cancel the market test or take other action that it deems appropriate. 39 U.S.C. § 3641(f); 39 C.F.R. § 3045.12.

Applying the framework discussed above, the Public Representative concludes there is no indication that the introduction of USPS Connect Local Mail will “create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.” 39 U.S.C. § 3641(b)(2). She finds that the market test therefore satisfies the “market disruption” condition of 39 U.S.C. § 3641(b)(2).

3. Correct Categorization

Section 3641(b)(3) requires that, for the purposes of a market test, the Postal Service correctly identify the experimental product as either market-dominant or competitive consistent with the criteria under 39 U.S.C. § 3642(b)(1). Section 3642(b)(1) is an assessment of the Postal Service’s market power and states that:

“The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. The competitive category of products shall consist of all other products.”²⁰

Although the Postal Service identifies USPS Connect Local Mail as a market-dominant product, it fails to provide any additional explanation or supporting data that would indicate the Postal Service is likely to exercise sufficient market power of a product of this kind in compliance with 39 U.S.C. § 3641(b)(3). See *generally* Notice at

²⁰ See 39 U.S.C. § 3642(b)(1).

4. In fact, the Postal Service makes no assertions as it relates to 39 U.S.C. § 3642(b)(1) and as required by 39 U.S.C. § 3641(b)(3).

Section 3642(b)(1) defines what a market-dominant or competitive product is by considering the Postal Service's market power over the product.²¹ See *generally* 39 U.S.C. § 3642(b)(1). If the Postal Service has sufficient market power over the product, then it is categorized as market-dominant. If the Postal Service does not possess market power over the product then it is categorized as competitive.

On several occasions, the Commission has described the type of information that would further any market power analysis under 39 U.S.C. § 3642(b)(1).²² In this instance, the Postal Service should have first identified the appropriate market segment applicable to USPS Connect Local Mail within the broader market.²³ Next, the Postal Service should have identified, compared and contrasted similar products or services offering from different service competitors.²⁴ After such an analysis, the Postal Service could identify any "reasonably interchangeable substitute products" that directly compete with USPS Connect Local Mail.²⁵ Additional information on topics like market share are also relevant in a market power analysis. Finally, in light of the information described above, the Postal Service should have assessed whether or not the Postal

²¹ Market power is a firm's ability to price an individual product or service higher than the marginal cost of producing it. See *e.g.*, Docket No. RM2017-1, Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, February 8, 2018 (Order No. 4402), at 16-17. The higher a firm is able to price its products above costs, the more market power that firm possesses. *Id.*

²² The Public Representative notes that, often times the Commission's market power discussion occurs in the context of a product addition or transfer docket under 39 U.S.C. § 3642; however, the analysis that occurs pursuant to 39 U.S.C. 3642(b)(1), is the same statutory provision applicable in the instant docket.

²³ See *e.g.*, Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019 (Order No. 4980), at 11.

²⁴ *Id.*; see also Docket No. MC2015-7, Order Conditionally Approving Transfer, July 20, 2017 (Order No. 4009), at 11-12.

²⁵ See *e.g.*, Docket No. MC2015-7, Order Denying Transfer for First-Class Mail Parcels, August 26, 2015 (Order No. 2686), at 15-16.

Service could effectively set the price of USPS Connect Local Mail substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business. *Id.* at 16.

As a threshold matter, the Public Representative acknowledges that, in terms of local couriers, it may be difficult to for the Postal Service to assess whether it has sufficient market power. This is because an assessment of whether or not the Postal Service could effectively set the price of USPS Connect Local Mail substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to local couriers, depends entirely on the circumstances of customers and local couriers by geographic area.²⁶ The Public Representative believes it is likely there are localities where the Postal Service would exercise market power over local couriers and localities where it may not. Conversely, the Postal Service has experience in submitting market power analysis related to competitors like UPS and FedEx, whose similar products or services fit more precisely into the appropriate market segment and are more uniform nationwide.²⁷ Unfortunately, Postal Service failed to undertake a market power analysis pursuant 39 U.S.C. § 3642(b)(1).

Instead, the Postal Service maintains that the product should be categorized as market-dominant due to the Postal Service's monopoly over letter delivery. *Id.* Indeed, as part of its Response to CHIR No. 1, the Postal Service indicates that it cannot confirm whether it exercises sufficient market power over USPS Connect Local Mail because the categorization selected is due to 39 U.S.C. § 3642(b)(2), which precludes the classification of a product as competitive if the product is

²⁶ The Postal Service notes that some local couriers charge by the mile for cars and bicycles, especially for large delivery and some charge by the hour which has ranges. See Responses to CHIR No. 1, question 2.d. The Postal Service also notes that it does not have access to the precise pricing information from specific couriers. *Id.*

²⁷ See e.g., Order Nos. 4980 and 4009.

covered by the postal monopoly.²⁸ However, the Public Representative notes that the statutory regulations governing market tests require a market power analysis pursuant to 39 U.S.C. § 3642(b)(1) and not the application of 39 U.S.C. § 3642(b)(2). The Public Representative could find no Commission precedent that indicates the application of 39 U.S.C. § 3642(b)(2) is an appropriate substitute for a market power analysis under 39 U.S.C. § 3642(b)(1) in the context of a proposed market test.

Furthermore, the Postal Service provides no information that supports its assertion that USPS Connect Local Mail is a product covered by the postal monopoly. The Public Representative acknowledges that USPS Connect Local Mail appears to fit within the definition of letters and packets under 39 C.F.R. § 310.1(a) and (b) whose conveyance or transmission is reserved to the United States pursuant to section 1696 of title 18. See 39 C.F.R. § 310.1(a) and (b); 18 U.S.C. § 1696. This is because the Postal Service notes that USPS Connect Local Mail will be First-Class Mail, which is “required for personal correspondence, handwritten or typewritten material, and bills or statements of account.” Responses to CHIR No. 1, question 1.c.

The Public Representative contends that the most concerning aspect of the Postal Service’s failure to more thoroughly address the USPS Connect Local Mail market test under 39 U.S.C. § 3642(b)(1), and at least attempt a market power analysis, is that there are aspects of the product that make it appear it could be categorized as competitive. First, the Postal Service states that “local document delivery could benefit from increased competition,” a market currently underserved by the Postal Service. See Notice at 1. This could be interpreted to mean that Postal Service will enter a market segment where businesses are already active. It

²⁸ See Responses to CHIR No 1, question 3.

causes the Public Representative to question whether the Postal Service would exercise sufficient market power in such a market.

Second, the Postal Service's most similar product to USPS Connect Local Mail is the Priority Mail Express product which is categorized as competitive and delivers the exact type of letters and packets that USPS Connect Local Mail seeks to deliver. Without a sufficient market power analysis, the Public Representative questions whether the USPS Connect Local Mail product could simply be considered a locally offered version of Priority Mail Express.

Finally, the Public Representative suggests that products or services offered by UPS or FedEx could be considered reasonably interchangeable substitute products that directly compete with USPS Connect Local Mail. Based on the information submitted by the Postal Service and the discussions above, USPS Connect Local Mail and competing products would be offered within the same relevant market. And although these products have differing characteristics (*e.g.*, guaranteed delivery versus non-guaranteed delivery), they also have similarities (local expedited delivery). It is therefore reasonable that the products offered by UPS and FedEx could be considered interchangeable with USPS Connect Local Mail and act as a substitute for the product.²⁹ As result, it is likely that the same customers will use UPS, FedEx or the Postal Service to deliver expedited local mail.³⁰ Such a likelihood impacts the Postal Service's ability to exercise sufficient market power over USPS Connect Local Mail. For these reasons, the Public Representative cannot confirm that the market test satisfies 39 U.S.C. § 3641(b)(3).

²⁹ See generally Order No. 2686 at 15-16 and Order No. 4009 at 19. The Public Representative recognizes that the reverse is likely not true, *i.e.*, USPS Connect Local Mail is not likely to be an adequate substitute for similar UPS and FedEx products due to entry limitations and lack of delivery guarantees.

³⁰ The Public Representative acknowledges that the potential exists for local courier customers and USPS Connect Local Mail customers to overlap; however, that possibly relies on the specific characteristics of local couriers and the products or services they offer.

4. Conclusions

Without additional information, the Public Representative can only rely on the Postal Service's assertions that USPS Connect Local Mail is appropriately categorized as a market-dominant product. However, the Public Representative notes that some of these uncertainties related to market disruption, impacts on small business or the proper categorization of USPS Connect Local Mail may be further clarified by the comments submitted in this proceeding. Additionally, some of the information may be generated by the Postal Service during the implementation of the market test.

B. Other Statutory and Regulatory Requirements

1. Duration

A market test may not exceed 24 months in duration unless the Commission authorizes an extension for up to an additional 12 months. 39 U.S.C. § 3641(d); 39 C.F.R. §§ 3045.10 and 3045.11. The Postal Service states that it intends for the market test to begin on January 9, 2022 and to run for 2 full years. Notice at 3.

2. Exemption from Revenue Limitation

Total revenues anticipated or received by the Postal Service from a market test in any fiscal year may not exceed \$10 million, as adjusted for inflation (*i.e.*, \$11,860,140), unless the Commission grants an exemption. 39 U.S.C. § 3641(e); 39 C.F.R. §§ 3045.15 and 3045.16. The Postal Service asserts that volumes and revenues for USPS Connect Local Mail are difficult to predict. Notice at 5. It asserts that if revenues approach the limitation, the Postal Service will furnish appropriate notice to the Commission and submit an application for exemption under 39 U.S.C. § 3641(e)(2) in a timely manner. *Id.*

3. Data Collection Plan

The Notice includes a proposed data collection plan for the market test as required by 39 C.F.R. § 3045.3(a)(2)(vi). Notice at 5. The Postal Service proposes to collect quarterly data on:

- Volumes (broken down by district)
- Revenues collected from the product
- Number of customers using the product
- Average size of mailing
- Attributable costs, including the market test administrative costs

Id. The Postal Service intends to report most of the data listed above on a quarterly basis. Notice at 5. However, it indicates that the relevant attributable cost data will be filed annually instead of quarterly. *See id.* The Public Representative notes that this appears to be inconsistent with 39 C.F.R. § 3045.20(d)'s requirement of quarterly reports. *See* 39 C.F.R. § 3045.20(d).

In addition, it is not clear from the Postal Service's filing what "by district" means. *See* Notice at 5. The Public Representative recommends that the Commission request that the data reported by the Postal Service be as disaggregated as possible by individual geographic area.

C. Public Representative Concern Related to Uniform Rates

Assuming USPS Connect Local Mail is correctly categorized as market-dominant, the Public Representative notes that the Postal Service's offering may violate 39 U.S.C. § 404(c). Section 404(c) requires that:

"the Postal Service to maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions."

See 39 U.S.C. § 404(c).

The Postal Service indicates that although the market test will be offered nationally, “not every Post Office location will have the capacity to accept and delivery USPS Connect Mail.” Responses to CHIR No. 1, question 2.a. For that reason, the Public Representative has concerns as to whether USPS Connect Local Mail violates 39 U.S.C. § 404(c).

The Commission has previously considered the concept of local letter mail delivery by the Postal Service in conjunction with the applicability of 39 U.S.C. § 404(c). In Docket No. MC95-1, the Commission indicated that “First-Class Mail is the original ‘class[] ... for the transmission of letters sealed against inspection,’ and as such it is subject to the requirement that, ‘[t]he rate for each such class shall be uniform throughout the United States, its territories, and possessions.’”³¹ The Commission goes on to opine that “[t]his restriction does not obviously preclude adoption of a separate classification category with a reduced rate for ‘local only’ mail, but it would appear to mandate that such a classification and rate be made available on identical terms throughout the nation's postal system.” *Id.* at V-40-V-41. The Public Representative considers the Commission opinion relevant in this docket because, despite its issuance prior to the Postal Enhancement and Accountability Act (PAEA)’s enactment, it directly relates to a potential First-Class Mail market-dominant product related to local letter delivery.³² The Commission’s opinion indicates that the existence of the First-Class Mail product does not shield the Postal Service from the requirements of 39 U.S.C. § 404(c) should the Postal Service propose a new letter product classification within First-Class Mail. She notes that although the classification and rate for USPS Connect Local Mail are available on identical terms, it appears that the product would not necessarily be made available throughout the nation’s postal system because certain Post Offices would not have the capacity to offer it.

³¹ Docket No. MC95-1, Opinion and Recommended Decision Sec. 5, January 26, 1996, at V-40.

³² See Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198, 3207 (2006).

The Public Representative urges the Commission to consider whether USPS Connect Local Mail would violate 39 U.S.C. § 404(c), but recognizes that such an analysis may be more appropriate in the future, should the Postal Service seek to launch USPS Connect Local Mail as a permanent product offering under 39 U.S.C. § 3642.

IV. CONCLUSION

Despite the uncertainties described above and the Public Representative's position that the Postal Service's Notice does not strictly comply with 39 U.S.C. § 3641, she generally supports the proposed market test of USPS Connect Local Mail. It is unclear whether alternative products on the market will directly compete with USPS Connect Local Mail or if any overlapping customers, in fact, exist. However, the Public Representative believes that the limitations associated with USPS Connect Local Mail, and the differences in alternative products on the market, reduces the risk of market disruption. Furthermore, although the concerns described above will need to be resolved should the Postal Service seek permanent status for USPS Connect Local Mail, actual implementation of the market test and the collection of thorough data should provide enough insight to clarify many of the issues identified by the Public Representative.

Respectfully Submitted,
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Docket No. MT2022-1

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